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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:

Office: ORLANDO, FL

Date: MAR 30 2010

IN RE:

Applicant:

APPLICATION: Application for Certificate of Citizenship under Section 320 of the Immigration and Nationality Act; 8 U.S.C. §1431.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Acting Field Office Director, Orlando, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on April 10, 1984 in Jamaica. The applicant's parents are [REDACTED] and [REDACTED]. The applicant's parents were married in 1988, and divorced in 1998. The applicant's father became a U.S. citizen upon his naturalization on January 5, 2001. The applicant was admitted to the United States as a lawful permanent resident on January 10, 1995. The applicant seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, based on the claim that she acquired U.S. citizenship through her father upon his naturalization.

The acting field office director concluded that the applicant did not acquire U.S. citizenship because she had failed to provide her parents' divorce decree or evidence that she had been residing with her father. The application was accordingly denied.

On appeal, the applicant submits a copy of her parents' divorce decree, school records and several sworn statements from the applicant, her parents' and neighbors stating that she had been residing with her father.

Section 320 of the Act was amended by the Child Citizenship Act of 2000 (CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), and took effect on February 27, 2001. The CCA benefits all persons who had not yet reached their 18th birthdays as of February 27, 2001. Because the applicant was under 18 years old on February 27, 2001, she meets the age requirement for benefits under the CCA.

Section 320 of the Act, 8 U.S.C. § 1431, states in pertinent part that:

- (a) A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:
 - (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
 - (2) The child is under the age of eighteen years.
 - (3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

The AAO notes, at the outset, that the applicant is the bearer of a U.S. passport issued in 2005. In *Matter of Villanueva*, 19 I&N Dec. 101 (BIA 1984), the Board of Immigration Appeals (Board) held that a valid U.S. passport is conclusive proof of U.S. citizenship. Specifically, the Board held in

Matter of Villanueva that:

unless void on its face, a valid United States passport issued to an individual as a citizen of the United States is not subject to collateral attack in administrative immigration proceedings but constitutes conclusive proof of such person's United States citizenship.

The AAO further notes that the applicant's parents' divorce decree, submitted on appeal, incorporates a settlement agreement awarding joint custody of the applicant to both parents. Although the agreement indicates that the applicant's primary residence was to be with her mother, the preponderance of the evidence demonstrates that she was in her father's physical custody prior to her 18th birthday.

Pursuant to 8 C.F.R. § 341.2(c), the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. In order to meet this burden, the applicant must submit relevant, probative and credible evidence to establish that the claim is "probably true" or "more likely than not." *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). The applicant has met her burden and her appeal will be sustained.

ORDER: The appeal is sustained.